IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

RSA.No. 384 of 2006()

AS.116/2004 of DISTRICT COURT,KOZHIKODE
OS.608/2002 of ADDL.M.C.,KOZHIKODE-I

.....

APPELLANT : APPELLANT/PLAINTIFF:

BHARAT SANCHAR NIGAM LIMITED,
CALICUT TELECOM DISTRICT, REPRESENTED
BY THE DIVISIONAL ENGINEER (LEGAL)
O/O. THE GENERAL MANAGER, TELECOM,
KOZHIKODE-1.

BY ADV. SRI.MATHEWS K.PHILIP,SC, BSNL

RESPONDENT:RESPONDENT/ DEFENDANT:

V.D. VELAYUDHAN, VADAKKE DEVAWATHIL
HOUSE, THALAKKULATHUR P.O., THALAKKULATHUR
AMSOM, THALAKKULATHU DESOM,
KOZHIKODE TALUK.

BY ADV. DR.K.B.MUHAMED KUTTY (SR.)
SRI.K.M.FIROZ

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 04/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

==========

R.S.A. NO. 384 OF 2006

==========

Dated this the 4th day of December, 2007

JUDGMENT

Plaintiff in O.S.608/2002 on the file of Additional Munsiff Court, Kozhikode is the appellant. Respondent is the defendant. Appellant instituted the suit for realisation of Rs.57,263/- allegedly due from respondent towards the telephone bills for telephone No.702263 installed in the residential house of respondent. Respondent resisted the suit contending that the suit as framed is not maintainable as the person who signed and verified the plaint has no authority to file the suit. It was also contended that the amount claimed is not due from respondent and in any case suit is barred by time. Learned Munsiff dismissed the suit holding that plaint was not properly verified and plaint claim was not proved and the claim is also barred. Appellant challenged the judgment before District Court, Kozhikode in

A.S.116/2004. Learned District Judge on reappreciation of evidence confirmed the findings of learned Munsiff that the plaint was not verified and signed by competent person and so is not maintainable. It was also found that claim of the appellant was not proved and the suit is barred by limitation. Appeal was dismissed. It is challenged in the second appeal.

2. Learned counsel appearing for appellant was heard.

3. The substantial questions of law formulated in the appeal memorandum are only with regard to the finding on limitation. It was contended that as BSNL came into existence only on 1.10.2000, it should have been found that suit filed within three years from the date of formation of the BSNL is within the period and suit is not barred by limitation.

4. On hearing the learned counsel, I do not find any substantial question of law involved in the appeal.

5. The trial court and first appellate court on the pleading and evidence found that plaint was verified and signed by the Divisional Engineer who was examined as PW1. As rightly found by courts below under Order XXIX Rule 1 of Code when a suit is filed on behalf of the Corporation, it is to be signed and verified by the Secretary or by any Director or other Principal Officer, who is capable of deposing the facts. There is no evidence to prove the case that PW1 is the Principal Officer of the appellant. Admittedly he is not the Secretary or a Director. In such circumstance, plaint as framed is not mainable and for that sole reason, appeal is to be dismissed. Moreover, the trial court on the evidence found that appellant did not establish that the amount claimed in the suit is due. First appellate court on reappreciation of evidence confirmed that finding. That finding of fact is final and cannot be interfered in exercise of the powers of this court under section 100 of the Code of Civil Procedure.

Hence the question of limitation is not at all relevant on the facts of the case.

Appeal is dismissed.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006